

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES D. SMITH,

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL,  
ET AL.,

Defendants.

No. C 12-02463 JSW

**ORDER DEFERRING RULING  
ON RESPONSE TO ORDER TO  
SHOW CAUSE**

On November 5, 2012, because of the multiple amended complaints and motions filed in this matter and in order to clarify, the Court Ordered that the operative complaint would be the fifth amended complaint received by the Court on October 19, 2012 (docket no. 51), which was deemed filed as November 5, 2012. In that Order, the Court also ordered that the fifth amended complaint would be the LAST iteration of the complaint filed in this matter, and it required Defendants to file their responsive pleading by no later than 14 days after service of the Order dated November 5, 2012. Notwithstanding this Order, on November 13, 2012, Plaintiff filed a motion for leave to file a *sixth* amended complaint, which is scheduled to be heard on February 22, 2013. Under the local rules, Defendants' opposition would have been due on or about December 2, 2012. Defendants have not opposed the motion.

On January 16, 2013, the Court denied Plaintiffs' motion for leave to file a sixth amended complaint, on the basis that the Court had ordered that the Fifth Amended Complaint would be the LAST iteration of the Complaint. (Docket No. 61.) In that Order, the Court also

1 Ordered Plaintiff to show cause why the Court should not be dismissed for failure to prosecute,  
2 and it directed Plaintiff to file a response to the Order to Show Cause by February 1, 2013. The  
3 Court also noted that if Plaintiff sought to file a belated opposition brief to Defendants' motion,  
4 he must show good cause for his request and must submit a proposed opposition brief with that  
5 request. The Court also ordered that any such request would also be due by no later than  
6 February 1, 2013.

7 On January 30, 2013, Plaintiff filed a Notice of Appeal of the Court's Order dated  
8 January 16, 2013, as well as several orders that the Court issued earlier in the case. Plaintiff  
9 also filed his response to the Order to Show Cause, setting forth his reasons why the Court  
10 should not dismiss the case for failure to prosecute. Plaintiff did not seek leave to file a belated  
11 opposition to the pending motion to dismiss.

12 The Court shall defer ruling on Plaintiff's response to the Order to Show Cause until the  
13 United States Court of Appeals has addressed Plaintiff's appeal.

14 **IT IS SO ORDERED.**

15 Dated: February 8, 2013

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES D SMITH,  
Plaintiff,

Case Number: CV12-02463 JSW

**CERTIFICATE OF SERVICE**

v.

OFFICE OF THE ATTORNEY GENERAL  
et al,

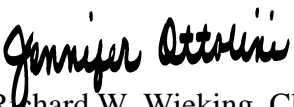
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 8, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James D. Smith  
705 N. State Street #547  
Ukiah, CA 95482

Dated: February 8, 2013

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk